

EXHIBIT B-1

EXHIBIT B-1

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

-----)
WALTER W. THIEMANN, et al.,
Plaintiffs,
vs.
OHSL FINANCIAL CORP., et al.,
Defendants.
-----)

DEPOSITION OF ROSS D. FUERMAN, Ph.D.
New York, New York
Thursday, October 21, 2004

Reported by:
Toni Allegrucci
JOB NO. 165883

<p style="text-align: right;">Page 2</p> <p>1</p> <p>2 October 21, 2004</p> <p>3 9:13 a.m.</p> <p>4</p> <p>5 Deposition of ROSS D. FUERMAN,</p> <p>6 Ph.D., taken on behalf of the Respected</p> <p>7 Parties, held at the offices of Esquire</p> <p>8 Deposition Services, 216 East 45th</p> <p>9 Street, New York, New York, pursuant to</p> <p>10 Notice, before Toni Allegrucci, a Notary</p> <p>11 Public of the State of New York.</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">Page 4</p> <p>1</p> <p>2 A P P E A R A N C E S C O N T ' D :</p> <p>3</p> <p>4 SCHROEDER MAUNDRELL BARBIERE & POWERS</p> <p>5 Attorneys for Defendants</p> <p>6 DINSMORE & SHOHL AND ROE</p> <p>7 11935 Manson Road Ste. 110</p> <p>8 Cincinnati, Ohio 45249</p> <p>9 BY: ROBERT S. HILLER, ESQ.</p> <p>10</p> <p>11</p> <p>12 A L S O P R E S E N T :</p> <p>13 JASON COHEN, ESQ., KMK, VIA TELEPHONE</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
<p style="text-align: right;">Page 3</p> <p>1</p> <p>2 A P P E A R A N C E S :</p> <p>3</p> <p>4 GENE MESH & ASSOCIATES</p> <p>5 Attorneys for Plaintiffs</p> <p>6 2605 Burnet Avenue</p> <p>7 Cincinnati, Ohio 45219</p> <p>8 BY: MICHAEL G. BRAUTIGAM, ESQ.</p> <p>9</p> <p>10</p> <p>11 KEATING, MUETHING & KLEKAMP, PLL</p> <p>12 Attorneys for Defendants</p> <p>13 OHSL FINANCIAL CORP</p> <p>14 PROVIDENT</p> <p>15 1400 Provident Tower</p> <p>16 One East Fourth Street</p> <p>17 Cincinnati, Ohio 45202</p> <p>18 BY: JAMES E. BURKE, ESQ.</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">Page 5</p> <p>1</p> <p>2 IT IS HEREBY STIPULATED AND AGREED</p> <p>3 by and between the attorneys for the</p> <p>4 respective parties herein, that filing,</p> <p>5 sealing and certification be and the</p> <p>6 same are hereby waived.</p> <p>7</p> <p>8 IT IS HEREBY STIPULATED AND AGREED</p> <p>9 that all objections, except as to the form</p> <p>10 of the question, shall be reserved to the time</p> <p>11 of the trial.</p> <p>12</p> <p>13 IT IS FURTHER STIPULATED AND AGREED</p> <p>14 that the within deposition may be signed</p> <p>15 before any Notary Public with the same force</p> <p>16 and effect as if signed and sworn to before</p> <p>17 the Court.</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>

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<p style="text-align: right;">Page 6</p> <p>1 FUERMAN</p> <p>2 ROSS D. FUERMAN, called as a</p> <p>3 witness, having been duly sworn by a Notary</p> <p>4 Public, was examined and testified as follows:</p> <p>5 EXAMINATION BY</p> <p>6 MR. BURKE:</p> <p>7 Q. Good morning, Mr. Fuerman. We're</p> <p>8 here to take your deposition in the case of</p> <p>9 Walter Thiemann versus OHSL Financial Corp.,</p> <p>10 that's pending in the United States District</p> <p>11 Court, for the Southern District of Ohio.</p> <p>12 Have you been deposed before?</p> <p>13 A. No, I have not.</p> <p>14 Q. I'm sure your counsel has told you</p> <p>15 sort of the way it works, but I'll be asking</p> <p>16 you questions here. You are under oath. If</p> <p>17 at any time my questions are unclear, feel</p> <p>18 free to ask for clarification.</p> <p>19 If you keep your voice up and answer</p> <p>20 audibly that helps the Court Reporter.</p> <p>21 Finally, I have a tendency to speak quickly.</p> <p>22 I'll try to avoid interrupting you, and if you</p> <p>23 wait for my question to be finished before you</p> <p>24 answer the transcript will read that much</p> <p>25 better.</p>	<p style="text-align: right;">Page 8</p> <p>1 FUERMAN</p> <p>2 do any additional work, to the extent you have</p> <p>3 done any additional work or come up with any</p> <p>4 additional opinions other than what's</p> <p>5 reflected in the filed report, I would ask</p> <p>6 that you advise your counsel so he can tell</p> <p>7 me. I want to understand before trial</p> <p>8 precisely what you are going to testify to.</p> <p>9 A. Okay, yes.</p> <p>10 Q. So if anything else happens please</p> <p>11 let him know because we'll probably want to</p> <p>12 depose you about that, as well.</p> <p>13 MR. BRAUTIGAM: I just want to point</p> <p>14 out that discovery is continuing. As I</p> <p>15 pointed out, I personally received the</p> <p>16 Chris Carey transcripts from California.</p> <p>17 Dr. Fuerman has reviewed this.</p> <p>18 Dr. Fuerman continues to review discovery</p> <p>19 transcripts as they are made available.</p> <p>20 MR. BURKE: That's fine.</p> <p>21 Q. All I ask you to do, as you do that</p> <p>22 to the extent it affects your opinions,</p> <p>23 changes your opinions, causes you to render</p> <p>24 new opinions, that you advise Mr. Brautigam</p> <p>25 and he can advise me so we can be aware of</p>
<p style="text-align: right;">Page 7</p> <p>1 FUERMAN</p> <p>2 Finally, if at any time you want to</p> <p>3 take a break just let me know and we'll</p> <p>4 accommodate you. If you answer the questions</p> <p>5 that I'm asking you I will assume that you</p> <p>6 understood what I was asking.</p> <p>7 Any questions that you have of me?</p> <p>8 A. No. I think it's fairly clear.</p> <p>9 Q. All right. Do you prefer</p> <p>10 Professor Fuerman, Mr. Fuerman, Dr. Fuerman,</p> <p>11 let me know?</p> <p>12 A. Professor Fuerman will be fine.</p> <p>13 Q. That's fine. You have been</p> <p>14 identified as an expert witness for the</p> <p>15 plaintiffs in this case; is that correct?</p> <p>16 A. That is correct.</p> <p>17 Q. We're here to take your deposition</p> <p>18 and expert witness depositions are a little</p> <p>19 bit different. I want to understand precisely</p> <p>20 what you are going to testify to at trial. We</p> <p>21 have the report that you previously issued,</p> <p>22 dated August 8th of 2004.</p> <p>23 I assume, and if you don't tell me</p> <p>24 to the contrary that that is everything you</p> <p>25 are going to testify about, to the extent you</p>	<p style="text-align: right;">Page 9</p> <p>1 FUERMAN</p> <p>2 that. All right?</p> <p>3 A. That makes sense.</p> <p>4 Q. Would you state your name and spell</p> <p>5 your last name for the record, please.</p> <p>6 A. Ross D. Fuerman, that's</p> <p>7 F-U-E-R-M-A-N.</p> <p>8 Q. What's your residence address?</p> <p>9 A. 19 Westgait, that's all one word,</p> <p>10 Road, Newton, Massachusetts 02459.</p> <p>11 Q. What is your business address?</p> <p>12 A. It is a bit unusual in that I do my</p> <p>13 research mostly from my home, but at the</p> <p>14 university, I am at Suffolk University, that's</p> <p>15 S-U-F-F-O-L-K, 8 Ashburton Place, Boston,</p> <p>16 Massachusetts 02108. I'm in the Sawyer School</p> <p>17 of Management.</p> <p>18 Q. What is your position there?</p> <p>19 A. Associate Professor of Accounting.</p> <p>20 Q. Describe for me what an "associate</p> <p>21 professor" is?</p> <p>22 A. In academe among the tenured or the</p> <p>23 tenured track faculty there are three levels</p> <p>24 of professors. The beginning level is</p> <p>25 assistant. Then typically after six or seven</p>

3 (Pages 6 to 9)

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2 years a person is considered to be promoted

3 and tenured as an associate.

4 I was promoted and tenured about a

5 year and a half ago, so now I'm an associate.

6 The next level is called full professor, and

7 many professors never reach that level.

8 Q. How does one go from being an

9 associate professor to a full professor?

10 A. I happen right now to be serving on

11 the promotion tenure and review committee.

12 That committee reviewed my work when I applied

13 for tenure. They reviewed my teaching, the

14 quality of my teaching based on student

15 evaluations and other things.

16 They evaluated my service to the

17 school in helping to run the school and they

18 evaluated my research. They require the

19 professor publish a fair number of articles in

20 referee journals. They consider all this and

21 they considered my application and promoted me

22 to associate professor.

23 Q. You are in a tenured position now?

24 A. That is correct.

25 Q. My prior question, though, was more

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2 directed. How does one go from being an

3 associate professor to a full professor, if

4 you know?

5 A. After however many years the

6 applicant wants to wait the applicant

7 professor fills out an application form and

8 submits, again, a dossier of his or her

9 teaching, research and service to the school

10 and it is evaluated by the promotion and

11 tenure committee.

12 And it's then that recommendation is

13 given to the dean of the school, the dean of

14 the school then makes a recommendation to the

15 president of the university, who makes a

16 recommendation to the board of trustees and

17 formally the board of trustees confers either

18 a promotion or a tenure.

19 Q. Have you ever applied for that?

20 A. No, I have not. It would be fairly

21 unusual for someone to apply so quickly after

22 having been promoted to associate professor.

23 Q. Other than I take it at

24 Suffolk University, you were employed

25 full-time by them?

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2 A. That is correct.

3 Q. Do you have an employment

4 relationship with any other companies or

5 entities at this time?

6 A. No, I do not.

7 MR. BURKE: Off the record.

8 (Discussion off the record.)

9 MR. BURKE: Let's mark this as

10 deposition Exhibit 1.

11 (Fuerman Exhibit 1, document, marked

12 for identification, as of this date.)

13 Q. Can you identify what I've marked as

14 deposition Exhibit 1, Professor Fuerman.

15 Fuerman, right?

16 A. Fuerman, but I'm used to people

17 mispronouncing it throughout my life. It's

18 titled "Notice of Expert Deposition of

19 Ross D. Fuerman.

20 Q. This was transmitted to you by

21 Mr. Brautigam in recent days?

22 A. Right, I received it Monday.

23 Q. And subsequent --

24 A. By e-mail.

25 Q. I'm sorry?

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2 A. By e-mail I received it Monday.

3 Q. Subsequent to that Mr. Brautigam and

4 I had some discussions of what we would be

5 looking for, and we agreed we are not asking

6 you to reproduce pleadings, depositions,

7 things in the record, but just asking you to

8 produce portions of your file that had not

9 been produced previously.

10 Did you understand that?

11 A. Yes, and as a matter of practicality

12 that's all I could fit into my briefcase to

13 carry on the train.

14 Q. Just in generally terms, you've

15 brought with you today about eight ten-inches

16 worth of documents. Can you generally

17 describe what you've produced for us today.

18 A. I've produced two sets of documents.

19 The first set I gathered together gradually

20 over the last few weeks. They are items that

21 I cite in my expert report. Articles by other

22 professors, accounting standards, things of

23 that nature.

24 The documents that I pulled together

25 since receiving the Notice of the Expert

4 (Pages 10 to 13)

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1 FUERMAN

2 Deposition are items that you requested.

3 Should we go through them one by one?

4 Q. Sure. I think the first is your

5 time sheets?

6 A. Yes, that's my time sheets with Mesh

7 and Associates. The second is a May 3, 2004

8 memo that I wrote regarding the Joe Stager

9 deposition. The next is correspondence from

10 me to Mike Brautigam.

11 After that is a correspondence from

12 Mike Brautigam to myself. After that is the

13 next to last draft of a document that was

14 filed with the court January 22, 2004, a

15 document that I wrote and signed. Then after

16 that is a document -- have I missed something?

17 There was also a draft of a document

18 that was actually filed with the court

19 March the 5th, 2004. That's a draft in here

20 also. There's then two drafts of a document

21 that was not filed with the court, but was

22 given to you.

23 The second to last draft of Expert

24 Report of Ross D. Fuerman, August 2004. Next

25 to last draft, this would have been the last

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2 draft before the final document that was given

3 to you, Expert Report of Ross D. Fuerman,

4 dated August 7, 2004. And then I gave you

5 these.

6 I don't know that they have anything

7 to do with anything. I just thought you might

8 want to see my Business Week article.

9 Q. I appreciate that. There was one

10 final couple of pages that you also

11 identified?

12 A. Yes. The first page is from page 75

13 of Provident 10 K, filed March 29, 2000. It

14 is part of the notes to the consolidated

15 financial statements. It's a pro forma

16 footnote and I anticipate that this will come

17 up during the deposition today so.

18 That's why I thought I would give

19 you a copy of it in advance. The other piece

20 of paper is a printout of a short spreadsheet,

21 with four rows and four columns, that shows

22 what Provident reported as its earnings per

23 share and net income for years 1998 and 1999,

24 and how that varied in the 10 K filed

25 March 30, '99, March 29, 2000, March 15, 2001

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2 and March 27, 2002. I anticipated this might

3 also come up during the deposition, so I gave

4 you a copy.

5 Q. The earnings per share figures that

6 you summarize on the second page of the last

7 document you talked about refer to 10 Ks filed

8 in the periods starting March 30, 1999, for

9 the years thereafter?

10 A. No. Those are in the far left

11 column, those are the filing dates. The 10 K

12 filed 3/30/99 was for the fiscal year ending

13 12/31/98. The 10 K filed 3/29/00 would be for

14 the fiscal year ending 12/31/99 and so forth.

15 Q. Okay. Thank you. We have

16 previously marked in this case as

17 Plaintiffs' 115 a copy of your report. I ask

18 you to take a look at that and tell me if you

19 can identify that or not?

20 MR. BRAUTIGAM: Are you done with

21 deposition Exhibit 1?

22 MR. BURKE: Yes.

23 MR. BRAUTIGAM: In addition to being

24 inappropriate and unnecessary. I believe

25 that the document is intentionally

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2 misleading, in that it attempts to

3 suggest to the witness and anyone else

4 that Mr. Grier and Mr. Burke are counsel

5 only for the Provident defendants.

6 That's incorrect.

7 I pointed this out to them and

8 apparently they are content to leave a

9 false, misleading impression on the

10 record.

11 MR. BURKE: Mr. Brautigam, we talked

12 about that and that's a silly objection,

13 a silly point and nobody is mislead.

14 Q. Do you understand who I represent

15 today Mr. Fuerman?

16 A. To be frank, I'm not quite certain.

17 I do know that there is a difference of

18 opinion among the counsel as to who represents

19 whom.

20 Q. So you don't know who I represent

21 today?

22 A. I know that you represent

23 defendants, but there have been issues raised

24 as to exactly which defendants and whether

25 it's proper that you represent certain

5 (Pages 14 to 17)

<p style="text-align: right;">Page 18</p> <p>1 FUERMAN</p> <p>2 defendants, but not other defendants, and it</p> <p>3 seems to involve conflict of interest. I'm</p> <p>4 certainly not an expert in attempting to</p> <p>5 understand those kinds of issues.</p> <p>6 Q. I will represent to you that I</p> <p>7 represent the Provident and the OHSL</p> <p>8 defendants, along with Mr. Grier and Mr. Cohen</p> <p>9 who is on the phone with us. Can you accept</p> <p>10 that?</p> <p>11 A. Yes.</p> <p>12 Q. You've not been asked to render any</p> <p>13 kind of opinions on any of the issues you just</p> <p>14 talked about, have you?</p> <p>15 A. No, I have not.</p> <p>16 Q. Okay. If at any time you believe</p> <p>17 that you are confused as to who I represent or</p> <p>18 anything like that, please feel free to ask</p> <p>19 for clarification.</p> <p>20 A. Thank you.</p> <p>21 Q. All right. Plaintiffs' Exhibit 115,</p> <p>22 which you have.</p> <p>23 A. Yes, I identified this. This</p> <p>24 appears to be a copy of the August 8, 2004</p> <p>25 expert report of Ross D. Fuerman, Ph.D. which</p>	<p style="text-align: right;">Page 20</p> <p>1 FUERMAN</p> <p>2 Chartered Accountants or something like that.</p> <p>3 Q. Let's start with your educational</p> <p>4 history. Can you describe it for me.</p> <p>5 A. My high school?</p> <p>6 Q. You can start with your university.</p> <p>7 A. I went to the University of</p> <p>8 Cincinnati as an undergrad, majored in</p> <p>9 History. Went to Jewish Theological Seminary</p> <p>10 in New York and got a Master's in History.</p> <p>11 That's here in New York, at 122nd and</p> <p>12 Broadway.</p> <p>13 Then I went to, after a period of a</p> <p>14 couple years I believe it was, went to George</p> <p>15 Washington University, the National Law Center</p> <p>16 of George Washington University, and got a JD</p> <p>17 in 1982. And then I came back to the</p> <p>18 University of Cincinnati in September of 1991</p> <p>19 and began a Ph.D. in accounting program,</p> <p>20 defended my dissertation in May of '96 and</p> <p>21 received my degree I believe it was June of</p> <p>22 1996, Ph.D. in Accounting.</p> <p>23 Q. I'm sure it's in here, but what was</p> <p>24 the title of your dissertation?</p> <p>25 A. I used to that have in my resume, I</p>
<p style="text-align: right;">Page 19</p> <p>1 FUERMAN</p> <p>2 I wrote.</p> <p>3 Q. Take a look at the last four pages</p> <p>4 of that document. It's also entitled</p> <p>5 Exhibit A.</p> <p>6 A. Correct.</p> <p>7 Q. What is that?</p> <p>8 A. That's a copy of my resume.</p> <p>9 Q. Is this accurate and complete as we</p> <p>10 sit here today?</p> <p>11 A. Yes, in the sense that it's the</p> <p>12 resume that I have been using for my faculty</p> <p>13 documents that I submit to my university and</p> <p>14 reflects everything that I think is important</p> <p>15 about me as an accounting professor. The only</p> <p>16 thing that is a little bit different is that</p> <p>17 recently one of my article publications, which</p> <p>18 is regarded here as forthcoming, in corporate</p> <p>19 ownership and control has actually been</p> <p>20 published, and with permission of that</p> <p>21 publisher it was also published in a second</p> <p>22 journal called IFCA something. I can't</p> <p>23 remember the rest of it.</p> <p>24 Q. Do you know what that stands for?</p> <p>25 A. International Federation of</p>	<p style="text-align: right;">Page 21</p> <p>1 FUERMAN</p> <p>2 don't anymore. It was on the impact of the</p> <p>3 Central Bank of Denver Decision on auditor</p> <p>4 litigation. That's a Supreme Court decision,</p> <p>5 April 19, 2004. That's regarded as a very</p> <p>6 seminal decision in securities litigation.</p> <p>7 Q. It's a case that dealt with aiding</p> <p>8 and abetting liability, correct?</p> <p>9 A. That's correct.</p> <p>10 Q. I know it's difficult to boil it</p> <p>11 down, but essentially what was the point of</p> <p>12 your dissertation, the thesis of your</p> <p>13 dissertation?</p> <p>14 MR. BRAUTIGAM: Objection.</p> <p>15 A. It showed some evidence that there</p> <p>16 was a slight reduction in the frequency of</p> <p>17 lawsuits where the auditor was named a</p> <p>18 defendant for a short time after that</p> <p>19 decision, but it was not -- did not seem to</p> <p>20 be -- did not seem to have a permanent impact</p> <p>21 on the rate of auditor litigation. That was</p> <p>22 one of the main things.</p> <p>23 The other is that not only myself,</p> <p>24 but a number of people, a number of accounting</p> <p>25 professors, and law professors also, have</p>

6 (Pages 18 to 21)

<p style="text-align: right;">Page 22</p> <p>1 FUERMAN</p> <p>2 written papers where we document what</p> <p>3 characteristics are positively or negatively</p> <p>4 associated with the auditor being named a</p> <p>5 defendant, in a private securities class</p> <p>6 action. And I developed a new variable that</p> <p>7 no other academic had come up with to that</p> <p>8 point.</p> <p>9 Q. When you say things that are</p> <p>10 positive and negative with respect to an</p> <p>11 auditor being named in a litigation, positive</p> <p>12 or negative as to whom or what?</p> <p>13 A. In a statistical sense. My method</p> <p>14 in, and I have done this in many papers since,</p> <p>15 and also in that dissertation, is to look at a</p> <p>16 large sample of several hundred, in some cases</p> <p>17 a thousand, private securities class actions</p> <p>18 and identify using what's called logistic</p> <p>19 regression, what things seem to be present a</p> <p>20 lot if the auditor does get named a defendant</p> <p>21 versus do not seem to be present if the</p> <p>22 auditor gets named a defendant.</p> <p>23 This is something that a number of</p> <p>24 accounting professors have been working on</p> <p>25 because of the interest of the accounting</p>	<p style="text-align: right;">Page 24</p> <p>1 FUERMAN</p> <p>2 substantial accounting background actually</p> <p>3 before I started my Ph.D. program.</p> <p>4 And in the course of studying for</p> <p>5 the C.P.A. exam I was approached by the head</p> <p>6 of the Columbus office of the Becker C.P.A.</p> <p>7 Review Course who asked if I would be</p> <p>8 interested in becoming a teacher for that</p> <p>9 course, and I said yes. So that really is</p> <p>10 where I began to develop an interest in</p> <p>11 teaching accounting, and I've always been a</p> <p>12 research oriented person.</p> <p>13 Q. Maybe that's a way to approach this.</p> <p>14 I take it you went straight from the</p> <p>15 University of Cincinnati to the</p> <p>16 Jewish Theological Seminary?</p> <p>17 A. That is correct.</p> <p>18 Q. From there did you work following</p> <p>19 your graduation from the Jewish Theological</p> <p>20 Seminary?</p> <p>21 A. I worked. I had a couple of jobs.</p> <p>22 First I worked at Georgetown Law School in the</p> <p>23 placement office, some sort of really kind of</p> <p>24 a clerical position. Then I worked as a</p> <p>25 paralegal at Howard and Simon, a law firm on</p>
<p style="text-align: right;">Page 23</p> <p>1 FUERMAN</p> <p>2 industry and auditors in this which reflects</p> <p>3 the interests of accounting professors.</p> <p>4 Q. When did you first take accounting</p> <p>5 courses?</p> <p>6 A. At the University of Cincinnati as</p> <p>7 an undergrad. I believe I just had one</p> <p>8 quarter of accounting, not much.</p> <p>9 Q. Your Undergrad Degree was in</p> <p>10 History?</p> <p>11 A. That's correct.</p> <p>12 Q. Your Master's Degree was in history?</p> <p>13 A. That's correct.</p> <p>14 Q. So the next time you undertook a</p> <p>15 comprehensive study of accounting was when you</p> <p>16 began your Ph.D. studies at the University of</p> <p>17 Cincinnati?</p> <p>18 MR. BRAUTIGAM: Objection to "the</p> <p>19 next time."</p> <p>20 A. Actually I omitted my courses that I</p> <p>21 took at Franklin University in Columbus, Ohio.</p> <p>22 While I was at the Ohio Division of Securities</p> <p>23 I took evening courses at Franklin, enough to</p> <p>24 sit for the Ohio C.P.A. exam. I took a lot of</p> <p>25 courses there, and so I had a fairly</p>	<p style="text-align: right;">Page 25</p> <p>1 FUERMAN</p> <p>2 Pennsylvania Avenue, I think they've merged</p> <p>3 with another firm by now, for perhaps six</p> <p>4 months. And it was there that I developed my</p> <p>5 interest in the process of litigation, the way</p> <p>6 that the cases flow from District Court to</p> <p>7 Appellate Court to Supreme Court, and</p> <p>8 sometimes back began and around and around.</p> <p>9 I found that interesting, the whole</p> <p>10 process. That has been probably a major</p> <p>11 reason for the success of my research. I know</p> <p>12 and understand that process so well.</p> <p>13 Q. Were you a litigation paralegal at</p> <p>14 Howard and Simon?</p> <p>15 A. Yes.</p> <p>16 Q. What kind of things did you do?</p> <p>17 A. I worked gathering documents</p> <p>18 together and categorizing them or analyzing</p> <p>19 them in some way. I can't recall the details.</p> <p>20 It had to do with a hospital that was accused</p> <p>21 of anti-trust violations, and Howard and Simon</p> <p>22 was defending that hospital. I believe that</p> <p>23 was the gist of it.</p> <p>24 Q. I take it that after the employment</p> <p>25 you've just described was when you entered the</p>

7 (Pages 22 to 25)

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1 FUERMAN

2 George Washington University Law School?

3 A. Yes, shortly after that. I think I

4 did do a bit of traveling after that for

5 perhaps a month and then I went to law school.

6 Q. Were you a full-time law student?

7 A. I was a full-time law student.

8 Q. You obtained your degree in 1982?

9 A. That's correct.

10 Q. Following your recent of your law

11 degree, where did you go, did you work again

12 after that?

13 A. I did. I worked for a short time

14 at -- it was on Wall Street. I can't

15 remember. It was an insurance brokerage firm,

16 but it was just for a few months and it did

17 not suit me.

18 So I went back to Ohio where I'm

19 from, and I'm trying to remember the exact

20 sequence of events. Maybe I can refresh my

21 memory from what I've got down here. At some

22 point I met people who I discussed the idea of

23 working at the Ohio Division of Securities.

24 That sounded like an interesting thing to do

25 and it could be a good way to proceed.

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1 FUERMAN

2 Q. Let me go back to George Washington.

3 While you were there were you on the law

4 review?

5 A. No.

6 Q. The moot court team?

7 A. I was not. I don't know if it was a

8 requirement, but many of us did participate in

9 moot court classes or competitions of some

10 sort. I do remember having participated in a

11 bit of that.

12 Q. Were you under the coif?

13 A. No.

14 Q. Where were you originally born in

15 Ohio, where did you grow up?

16 A. I was born in New Philadelphia, and

17 we moved to Dover when I was six years old.

18 Q. Approximately when did you begin

19 working at the Ohio Division of Securities?

20 A. Would have been 1983.

21 Q. How long did you stay with them?

22 A. A couple of years and then I took a

23 position with, as an associate, with a small

24 law firm called Fenz Jones and LeGrand.

25 Q. Can you spell that?

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1 FUERMAN

2 A. Enz, E-N-Z, Jones and LeGrand,

3 capital L-E, capital G-R-A-N-D.

4 Q. Where are they based?

5 A. I think they've broken up, but they

6 were based in Columbus. I think they at one

7 point moved to Westerville, but I just have

8 heard through the grapevine they've broken up.

9 Q. All right. While you were at the

10 Ohio Division Securities from '83 to '85,

11 describe your duties?

12 A. I was an examiner. Companies that

13 were interested in doing securities operations

14 in Ohio, that needed to get the permission of

15 the Ohio divisions -- this is part of the

16 merit review process -- would file papers

17 asking for permission. They had to get the

18 permission in some cases not only of the

19 securities exchange commission, but also from

20 us, not always.

21 There are many exemptions, but

22 sometimes they would be required and different

23 people would review different securities

24 offering applications. These could be

25 secondary offerings or initial public

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1 FUERMAN

2 offerings, stock offerings, limited

3 partnership syndications of real estate, oil

4 and gas. Syndications were very big at this

5 time. This is before the tax reform of 1986.

6 Q. What were the nature of the duties

7 you were performing in this review process?

8 A. We had lists of things we were

9 supposed to examine, that were motivated by

10 the desire for in investor protection that we

11 would not, in some cases, we would not permit,

12 for example, a company to do a stock offering

13 if their debt equity ratio was not good enough

14 in our view, or if their return on assets

15 wasn't good enough in our view.

16 Or if we felt that it was a deal

17 structured where the fees, the front end fees

18 were too high and too much of the offering was

19 going into fees, to the underwriter, the

20 broker, the accountant, the securities

21 transaction attorney, rather than into the

22 substantive investment of the company that was

23 raising the funds.

24 Q. What was your title at the Ohio

25 Division of Securities?

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1 FUERMAN

2 A. I think actually I have that right

3 here, which is good, financial institutions

4 examiner. That was my official title.

5 Q. Did that indicate that you were

6 dealing primarily with financial institutions

7 or not?

8 A. It does not. It really is a

9 misnomer. I reviewed the applications of all

10 kinds of securities offerings.

11 Q. Were you at a junior level? Is this

12 an entry level position?

13 A. It was an entry level position, yes.

14 Q. In the course of your review there

15 are other people above you who were also

16 involved in that process?

17 A. There were.

18 Q. Who would you have been reporting

19 to?

20 A. It was really a fairly thin

21 reporting structure. There was the assistant

22 commissioner and there was the commissioner

23 and that was really it. The assistant

24 commissioner I believe was Phil Lemcool at the

25 time and the commissioner was Roger Mardy.

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1 FUERMAN

2 Q. While at the Ohio Division of

3 Securities, were you involved at all in the

4 enforcement side of things?

5 A. Occasionally I would help out. We

6 would all be drafted from time to time to help

7 out in various tasks where they needed a lot

8 of people, but not very often.

9 Q. Did you ever try any cases or

10 actually participate in litigation while at

11 the Ohio Division of Securities?

12 A. No, not at all.

13 Q. Your role in enforcement proceedings

14 would have been more of a behind the scenes

15 support role?

16 A. Yes, and very trivially. We all

17 came into observe a securities fraud trial, at

18 least once, all the attorneys of the office,

19 but I had no substantive role in that.

20 Q. Why did you choose to leave the Ohio

21 Division of Securities?

22 A. I felt that it was a good offer that

23 was being made to me by Enz Jones and LeGrand.

24 I came to be friendly with those attorneys.

25 They had dealings with the Ohio division, and

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1 FUERMAN

2 they were a growing firm and they needed

3 people and they thought that I would add

4 something to their firm. So we talked and I

5 became an associate there.

6 Q. What was the nature of their

7 practice?

8 A. It was a general practice, just

9 about every kind of transaction or civil

10 litigation you could think of. They did no

11 criminal litigation at all, but they did civil

12 litigation, both plaintiffs and defendants. A

13 lot of securities syndication, limited

14 partnership transactions, tax return

15 preparation, tax consulting, tax advising,

16 probate, estate work, trust planning, wills.

17 Q. How long did you stay with Enz Jones

18 and LeGrand?

19 A. Two and a half years.

20 Q. Which of the departments did you

21 practice in primarily?

22 A. It was such a small firm we did not

23 have formal departments. There were only

24 three partners and perhaps four associates. I

25 worked with all three of the partners. I did

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1 FUERMAN

2 a fair amount of securities litigation and

3 syndication and transaction work, forming

4 corporations, that kind of thing, with

5 David LeGrand, to a lesser extent with Steve

6 Enz. Civil litigation, especially insurance

7 defense work on behalf of nationwide with

8 Gray Jones.

9 Q. During the two and a half years you

10 spent with this firm, how many cases did you

11 in fact try?

12 A. I did not try a single case.

13 Q. How many securities litigation cases

14 were you involved with?

15 A. I was involved as a document creator

16 in many cases. I'm trying to remember how

17 many.

18 Q. Just a rough order magnitude, if you

19 can remember?

20 A. This would be a real wild guess, but

21 maybe 30 or 40. My job was a document person

22 really. I drafted Complaints, Answers,

23 replies, memos in support for motions of

24 summary judgment or for motions on the

25 pleadings. I assembled documents.

<p style="text-align: right;">Page 34</p> <p>1 FUERMAN</p> <p>2 I remember one case in particular</p> <p>3 where I had to spend a lot of time assembling</p> <p>4 documents to try to build a case. It had to</p> <p>5 do with intangible rights with proprietary</p> <p>6 rights on photographs, or had to do something</p> <p>7 with a dispute between a magazine publisher</p> <p>8 and a printer.</p> <p>9 Q. During the time that you were</p> <p>10 involved in the litigation process, did you</p> <p>11 take any depositions during your time at</p> <p>12 Enz LeGrand?</p> <p>13 A. I would sometimes sit in and told to</p> <p>14 attend a deposition, but unless something</p> <p>15 extreme were to happen I would not get</p> <p>16 involved.</p> <p>17 Q. You don't recall taking any</p> <p>18 depositions on your own?</p> <p>19 A. Not really. My role would have been</p> <p>20 more or less just to observe that things went</p> <p>21 reasonably in accord with the rules for which</p> <p>22 the depositions are governed, but nothing</p> <p>23 significant.</p> <p>24 Q. How about, did you argue any of the</p> <p>25 motions you wrote?</p>	<p style="text-align: right;">Page 36</p> <p>1 FUERMAN</p> <p>2 with the technical aspects of my work.</p> <p>3 Q. When you went to</p> <p>4 Cardinal Industries, tell me what you did?</p> <p>5 A. I specialized in writing many, many</p> <p>6 real estate limited partnership syndications.</p> <p>7 I wrote the syndication documents, I review</p> <p>8 the projections. I would participate in the</p> <p>9 legal research needed for them.</p> <p>10 I was a liaison with an outside law</p> <p>11 firm that provided a tax opinion, and also</p> <p>12 occasionally with a C.P.A. firm that would</p> <p>13 provide what's called an examination of the</p> <p>14 forecast. We rarely did forecast, we usually</p> <p>15 did projections. We rarely had them opined on</p> <p>16 by an outside C.P.A. firm.</p> <p>17 Q. What was the business of Cardinal</p> <p>18 Industries?</p> <p>19 A. They had two, maybe three, depends</p> <p>20 how you look at it, basic business. One is</p> <p>21 they manufactured housing. They were a</p> <p>22 pioneer in developing the whole concept of</p> <p>23 modular housing, manufactured housing.</p> <p>24 And they had five factories in</p> <p>25 different locations across the United States.</p>
<p style="text-align: right;">Page 35</p> <p>1 FUERMAN</p> <p>2 A. No.</p> <p>3 Q. Do you recall any of the cases on</p> <p>4 which you worked actually going to trial?</p> <p>5 A. I don't remember any case actually</p> <p>6 going to trial. It seemed like everything</p> <p>7 settled. One case I remember had to do with</p> <p>8 arbitration. There was a Supreme Court</p> <p>9 holding that came out and suddenly made</p> <p>10 arbitration clauses more strong in the</p> <p>11 interpretation of the courts.</p> <p>12 I remember I wrote a lot of</p> <p>13 documents for that. And I left the firm, I</p> <p>14 was told after I left the firm the case</p> <p>15 settled.</p> <p>16 Q. Why did you leave Enz Jones and</p> <p>17 LeGrand after two and a half years?</p> <p>18 A. Well, it was by mutual agreement</p> <p>19 with the firm. It was partly a matter of I</p> <p>20 had a better opportunity with Cardinal</p> <p>21 Industries and partly they felt I was not a</p> <p>22 sufficient rainmaker.</p> <p>23 I was not bringing in the clients,</p> <p>24 and that's a very important thing for a small</p> <p>25 firm. I don't think they had any complaint</p>	<p style="text-align: right;">Page 37</p> <p>1 FUERMAN</p> <p>2 They also managed the properties that got</p> <p>3 built. They managed apartment complexes,</p> <p>4 Nights Inn, motels and a relatively smaller</p> <p>5 number of what they called "Cardinal</p> <p>6 retirement villages."</p> <p>7 This was the beginning of the adult</p> <p>8 living community kind of thing that has become</p> <p>9 very big today. Then the third thing was</p> <p>10 really what I was mostly involved in, which</p> <p>11 was the raising of equity capital via mostly</p> <p>12 by private placement memoranda, real estate</p> <p>13 limited partnerships, to fund these various</p> <p>14 projects that got built. They would be</p> <p>15 financed partly with those funds and partly</p> <p>16 with bank loans.</p> <p>17 Q. In the course of your duties you</p> <p>18 were writing or assisting in the preparation</p> <p>19 and writing of the offering documents?</p> <p>20 A. That's correct.</p> <p>21 Q. To attract investors to Cardinal</p> <p>22 projects?</p> <p>23 A. Well, as an attorney my job was to</p> <p>24 protect the company from legal liability, not</p> <p>25 to be a marketer, promoter. But there were</p>

10 (Pages 34 to 37)

<p style="text-align: right;">Page 38</p> <p>1 FUERMAN</p> <p>2 other people who collaborated on these</p> <p>3 documents, whose role was along those lines.</p> <p>4 And so the document really was a hybrid</p> <p>5 between the two purposes.</p> <p>6 Q. Okay. You answered my question.</p> <p>7 Were you in the legal department of</p> <p>8 Cardinal Industries at this time or</p> <p>9 functioning as a lawyer?</p> <p>10 A. I was and I wasn't. They had</p> <p>11 shifting relationships within the groups at</p> <p>12 Cardinal Industries. At one point I was very</p> <p>13 clearly under the supervision of a manager by</p> <p>14 the name of Bill Wolf who was in charge of the</p> <p>15 syndications.</p> <p>16 He was a person really with a</p> <p>17 management marketing kind of background, who</p> <p>18 really knew nothing about law or accounting.</p> <p>19 He had legal and accounting people like myself</p> <p>20 who would help him produce the documents and</p> <p>21 do what needed to be done.</p> <p>22 But there also was a general counsel</p> <p>23 at Cardinal, Howard Spiece. As time went on I</p> <p>24 began to develop a closer relationship with</p> <p>25 him and his assistant general counsel, I think</p>	<p style="text-align: right;">Page 40</p> <p>1 FUERMAN</p> <p>2 two real estate investment trusts, and those</p> <p>3 were public offerings, and those would have a</p> <p>4 portfolio of projects in each one of them.</p> <p>5 Q. While you were at Cardinal</p> <p>6 Industries, did you do any litigation?</p> <p>7 A. I think I may have from time to time</p> <p>8 assisted the general counsel in some trivial</p> <p>9 tasks related to litigation, but not</p> <p>10 substantively, no.</p> <p>11 Q. It was not a primary focus of your</p> <p>12 time?</p> <p>13 A. Not at all, not at all.</p> <p>14 Q. How long did you stay at Cardinal?</p> <p>15 A. I was there I think a year and a</p> <p>16 half. Yeah, I think I was there a year and a</p> <p>17 half.</p> <p>18 Q. Did your title or position change</p> <p>19 during that year and a half?</p> <p>20 A. I don't think so. It was never</p> <p>21 terribly clear what my title was to begin</p> <p>22 with. Things were run fairly informally.</p> <p>23 Q. Why did you leave Cardinal?</p> <p>24 A. They went into Chapter 11. They had</p> <p>25 some terrible financial difficulties brought</p>
<p style="text-align: right;">Page 39</p> <p>1 FUERMAN</p> <p>2 they may have even had one or two other</p> <p>3 people, in doing the things that they would</p> <p>4 do. So in time we were all working together I</p> <p>5 think is the way it worked out.</p> <p>6 Q. Your job was sort of a combination</p> <p>7 or a hybrid of a business position as well as</p> <p>8 a legal position?</p> <p>9 A. Well, I saw myself as entirely a</p> <p>10 legal and accounting position. At one point I</p> <p>11 was under the supervision of a non-lawyer,</p> <p>12 non-accountant Bill Wolf, but gradually I</p> <p>13 became more and more under the supervision of</p> <p>14 the general counsel. I think it involved</p> <p>15 interoffice politics, which probably happens</p> <p>16 at a lot of companies.</p> <p>17 Q. Were the syndications you were</p> <p>18 preparing for Cardinal Industries project</p> <p>19 specific?</p> <p>20 A. Yes.</p> <p>21 Q. Would they syndicate the rights to a</p> <p>22 particular apartment complex or retirement</p> <p>23 home?</p> <p>24 A. That's usually the way it went. The</p> <p>25 exception to that was they did one or maybe</p>	<p style="text-align: right;">Page 41</p> <p>1 FUERMAN</p> <p>2 on in part by the tax reform act of 1986,</p> <p>3 making it more difficult for them to raise the</p> <p>4 funds they needed to continue their</p> <p>5 syndications. They thought that they could</p> <p>6 somehow adjust to that, but in time it caught</p> <p>7 up with them.</p> <p>8 It was one of the largest Chapter 11</p> <p>9 bankruptcies ever filed in the</p> <p>10 Southern District of Ohio, in the Columbus</p> <p>11 Division.</p> <p>12 Q. Was there litigation filed in</p> <p>13 connection with any of the syndications that</p> <p>14 you participated in?</p> <p>15 A. Not that I'm aware of. I would not</p> <p>16 be surprised if when the company became</p> <p>17 insolvent during the last few months before</p> <p>18 filing for Chapter 11 that there may have been</p> <p>19 such lawsuits, but I'm not aware of them. I</p> <p>20 was told by somebody, I can't remember who,</p> <p>21 there were 600 outstanding lawsuits against</p> <p>22 the company. Things had gotten so bad.</p> <p>23 Q. Do you have any idea whether any of</p> <p>24 those lawsuits you heard about secondhand were</p> <p>25 securities litigation lawsuits against</p>

11 (Pages 38 to 41)

<p style="text-align: right;">Page 42</p> <p>1 FUERMAN</p> <p>2 Cardinal?</p> <p>3 A. Again, this is secondhand</p> <p>4 information at this point. I cannot even</p> <p>5 remember whether it was the general counsel,</p> <p>6 assistant general counsel or somebody else who</p> <p>7 commented, proudly, that there were lawyers</p> <p>8 that came in there attempting to see if they</p> <p>9 could develop a securities lawsuit and then</p> <p>10 when they got more information they backed off</p> <p>11 and they felt there was not a case to be made.</p> <p>12 Q. After you left Cardinal, where did</p> <p>13 you go?</p> <p>14 A. After that, I went to Schottenstein</p> <p>15 Stores Corporation, which could also simply be</p> <p>16 regarded as working for the Schottenstein</p> <p>17 family in Columbus. A friend of mine knew</p> <p>18 that I was distressed, that it looked like my</p> <p>19 job was going to come to an end. They were</p> <p>20 laying off large numbers of people every day,</p> <p>21 literally every day at Cardinal.</p> <p>22 He said look, I've heard that so and</p> <p>23 so needs a job, why don't you get in touch</p> <p>24 with them. I think you might be good for</p> <p>25 them, this might be a good fit.</p>	<p style="text-align: right;">Page 44</p> <p>1 FUERMAN</p> <p>2 teetering towards bankruptcy. They would</p> <p>3 frequently buy a 50 percent interest in these</p> <p>4 companies.</p> <p>5 They liked to do that rather than</p> <p>6 buy 100 percent interest for whatever reasons.</p> <p>7 So this mode of business created a need for</p> <p>8 some legal and financial people in-house and</p> <p>9 tax people to sort out the inevitable</p> <p>10 complexities that come from doing business</p> <p>11 this way. I was one of those people.</p> <p>12 I was corporate staff assistant I</p> <p>13 have written down here. You could also regard</p> <p>14 me as an assistant to the general counsel. I</p> <p>15 worked for various people there.</p> <p>16 Q. Who was the general counsel at</p> <p>17 Schottenstein?</p> <p>18 A. At that time Louise Grewin.</p> <p>19 Q. How long did you stay at</p> <p>20 Schottenstein?</p> <p>21 A. I was there for only six months.</p> <p>22 Q. Generally describe what you were</p> <p>23 doing, what you were personally doing during</p> <p>24 that six months period?</p> <p>25 A. A little bit of everything. They</p>
<p style="text-align: right;">Page 43</p> <p>1 FUERMAN</p> <p>2 Q. Were you hired by the stores or by</p> <p>3 the family, if you remember?</p> <p>4 A. I was really -- well, let me kind of</p> <p>5 explain the way it worked. It was very</p> <p>6 informal. The Schottenstein family is a very</p> <p>7 wealthy family in Columbus.</p> <p>8 Originally started out in just</p> <p>9 retail. They were big in retailing. They've</p> <p>10 been big in retailing for the last hundred</p> <p>11 years.</p> <p>12 They gradually began to develop</p> <p>13 other kinds of businesses, probably the</p> <p>14 biggest being, in addition to retailing, is</p> <p>15 they would go around the country to</p> <p>16 bankruptcies and they would buy inventory at</p> <p>17 bankruptcy auctions, and then they would make</p> <p>18 deals to resell the inventory either through</p> <p>19 their own stores, through other peoples</p> <p>20 stores.</p> <p>21 And they always were very shrewd</p> <p>22 business people. They would always be on the</p> <p>23 lookout for distressed businesses that they</p> <p>24 felt they wanted to acquire, either companies</p> <p>25 that were already in bankruptcy or that were</p>	<p style="text-align: right;">Page 45</p> <p>1 FUERMAN</p> <p>2 were constantly racing around from</p> <p>3 transaction, transaction. They would do</p> <p>4 things, like they would purchase a company or</p> <p>5 buy a 50 percent interest in a company that</p> <p>6 was in bankruptcy and then they would enter</p> <p>7 into negotiation.</p> <p>8 If this was a retailing company they</p> <p>9 bought, which more often than not was the</p> <p>10 case, there would be the issue of the</p> <p>11 outstanding leases that this company had in</p> <p>12 shopping malls around the country, and in</p> <p>13 bankruptcy a company has the right to rescind</p> <p>14 those. So there's a matter of negotiation</p> <p>15 between the landlord and the tenant at that</p> <p>16 point as to what's going to happen, so I would</p> <p>17 be involved in that. I would be involved in</p> <p>18 purchases of real estate, in factoring.</p> <p>19 I remember they had dealings with</p> <p>20 CIT Corporation. They were a big factor at</p> <p>21 the time. There were just many miscellaneous</p> <p>22 things that came up. Things like purchasing</p> <p>23 goods from outside the United States and</p> <p>24 customs duties and letters of credit that</p> <p>25 needed to be made available because when you</p>

12 (Pages 42 to 45)

<p style="text-align: right;">Page 46</p> <p>1 FUERMAN</p> <p>2 are doing an international transaction that's</p> <p>3 very important, more so than domestic.</p> <p>4 Just so many things. I can't</p> <p>5 remember them all. I left there because it</p> <p>6 really was not what I wanted and I had been</p> <p>7 doing some thinking ever since the Cardinal</p> <p>8 Industries started to go downhill of making a</p> <p>9 change in my career direction.</p> <p>10 As I said sometime before, I very</p> <p>11 much enjoyed teaching at the Becker C.P.A.</p> <p>12 review course. I've always enjoyed</p> <p>13 researching. I felt I wasn't getting any</p> <p>14 researching done at Schottenstein's, and it</p> <p>15 was a very fast paced kind of business that</p> <p>16 had to be done almost on the fly.</p> <p>17 My wife is a faculty brat. My</p> <p>18 father-in-law taught music theory at Miami for</p> <p>19 38 years and she has other relatives and</p> <p>20 friends in academe. I knew nothing about</p> <p>21 this, but she said I think this is something</p> <p>22 you should consider.</p> <p>23 We talked about it, and I knew from</p> <p>24 her and from other people that accounting was</p> <p>25 an attractive field of academe to go into. I</p>	<p style="text-align: right;">Page 48</p> <p>1 FUERMAN</p> <p>2 people outside the legal function as within</p> <p>3 the legal function.</p> <p>4 Q. And you indicated that a lot of work</p> <p>5 you were doing was in sort of a general</p> <p>6 corporate and real estate area?</p> <p>7 A. Yes.</p> <p>8 Q. Did you do any litigation or</p> <p>9 oversight of litigation while at</p> <p>10 Schottenstein?</p> <p>11 A. Actually now that you mention that I</p> <p>12 was involved with one case. Now, I did not do</p> <p>13 much. It was mostly helping to sort and</p> <p>14 locate and analyze some documents for</p> <p>15 litigation.</p> <p>16 Actually I had made one trip to</p> <p>17 Boston. We engaged Hall and Door as outside</p> <p>18 counsel. It had to do with alleged fraudulent</p> <p>19 conveyance of the Wiebolts Store in Chicago.</p> <p>20 This was one of many situations</p> <p>21 where Schottenstein's went in, bought a</p> <p>22 company out of bankruptcy and I cannot recall</p> <p>23 the details other than it involved alleged</p> <p>24 fraudulent conveyance. So I helped to defend</p> <p>25 the company against those charges.</p>
<p style="text-align: right;">Page 47</p> <p>1 FUERMAN</p> <p>2 spoke -- I had lunch and met Dean Jensen who</p> <p>3 at the time I believe was head of the Ph.D. in</p> <p>4 Accounting program at Ohio State University in</p> <p>5 Columbus. We talked and I concluded this was</p> <p>6 something that I wanted to do.</p> <p>7 I began to prepare myself by -- one</p> <p>8 of the things I found out by talking with a</p> <p>9 number of people is that my calculus</p> <p>10 background was insufficient. So I began to</p> <p>11 take some calculus courses to improve on that,</p> <p>12 and then I began making applications to</p> <p>13 schools.</p> <p>14 I was accepted at several schools.</p> <p>15 I chose Cincinnati because my wife's family is</p> <p>16 in Oxford, and it was nice having the</p> <p>17 grandparents nearby while we lived in Oxford</p> <p>18 for six years.</p> <p>19 Q. When you were working at the</p> <p>20 Schottenstein firm, the Schottenstein group</p> <p>21 we'll call it, were you in more of a legal</p> <p>22 function, an accounting function, a tax</p> <p>23 function; how would you describe it?</p> <p>24 A. I would describe it mostly as a</p> <p>25 legal function, but interfacing as much with</p>	<p style="text-align: right;">Page 49</p> <p>1 FUERMAN</p> <p>2 Q. Were you taking an in-court role or</p> <p>3 sort of a support role at the company?</p> <p>4 A. No, just a support role.</p> <p>5 Q. I take it after you applied to the</p> <p>6 University of Cincinnati and were accepted,</p> <p>7 from there on your career was in an academic</p> <p>8 mode, first at the University of Cincinnati,</p> <p>9 later at Suffolk; is that correct?</p> <p>10 A. That's pretty much true. I have</p> <p>11 occasionally done some tax return work. I did</p> <p>12 one fraud audit. This was during the process</p> <p>13 of my studying to become a certified fraud</p> <p>14 examiner.</p> <p>15 But pretty much I focused almost</p> <p>16 entirely until very recently on teaching,</p> <p>17 research and service to the university because</p> <p>18 it's difficult to obtain tenure if you don't</p> <p>19 really focus like that.</p> <p>20 Q. Let's go back and I want to deal a</p> <p>21 little bit with your professional training.</p> <p>22 You had indicated that you began to take</p> <p>23 accounting courses while you were working at</p> <p>24 the Ohio Division of Securities?</p> <p>25 A. That's right.</p>

13 (Pages 46 to 49)

<p style="text-align: right;">Page 50</p> <p>1 FUERMAN</p> <p>2 Q. How many years did you take</p> <p>3 accounting courses at that time?</p> <p>4 A. Well, the courses probably stretched</p> <p>5 beyond the time when I was at the Ohio</p> <p>6 Division of Securities. I may have started to</p> <p>7 study before. I know I certainly continued</p> <p>8 after. Two years probably, I'm guessing,</p> <p>9 maybe three. Probably two years is more.</p> <p>10 Q. What was the name of the</p> <p>11 institution?</p> <p>12 A. Franklin University.</p> <p>13 Q. Is that a four year institution?</p> <p>14 A. It's a four year institution. They</p> <p>15 may have some Master Degrees also. It's in</p> <p>16 Columbus Ohio.</p> <p>17 Q. Did you obtain any degree from</p> <p>18 Franklin University?</p> <p>19 A. I did not. At that time I already</p> <p>20 had enough I felt.</p> <p>21 Q. You became -- you were at the Ohio</p> <p>22 Division of Securities from '83 to '85; is</p> <p>23 that correct?</p> <p>24 A. That's correct.</p> <p>25 Q. Did you indicate you sat for the</p>	<p style="text-align: right;">Page 52</p> <p>1 FUERMAN</p> <p>2 took one course there. That was shortly</p> <p>3 before I started my Ph.D. program or maybe</p> <p>4 right at the beginning of it. I was living</p> <p>5 right there in Oxford, so it was convenient.</p> <p>6 Q. Is your C.P.A. license still active?</p> <p>7 A. Yes, it is.</p> <p>8 Q. And what states are you licensed in?</p> <p>9 A. Only in Ohio.</p> <p>10 Q. What about your bar admissions,</p> <p>11 where are you admitted?</p> <p>12 A. I'm admitted in Ohio and the</p> <p>13 District of Columbia, but I am not actively</p> <p>14 licensed to practice because I let my -- I did</p> <p>15 not continue meeting my CPE requirements each</p> <p>16 year.</p> <p>17 Q. When did your license to practice</p> <p>18 cease to be active in those two states if you</p> <p>19 remember?</p> <p>20 MR. BRAUTIGAM: License to practice</p> <p>21 law?</p> <p>22 MR. BURKE: Yes.</p> <p>23 A. Oh, ten years ago I'm guessing.</p> <p>24 Q. So around the time you became a</p> <p>25 participant at the Ph.D. program at the</p>
<p style="text-align: right;">Page 51</p> <p>1 FUERMAN</p> <p>2 C.P.A. exam during that time?</p> <p>3 A. I sat after I finished my accounting</p> <p>4 courses, probably around '86.</p> <p>5 Q. And what was the result?</p> <p>6 A. I passed.</p> <p>7 Q. All three parts?</p> <p>8 A. All four parts. Not in one fell</p> <p>9 swoop. I did not even attempt to do them all</p> <p>10 in one fell swoop. I did them in stages. We</p> <p>11 were permitted in Ohio to do that.</p> <p>12 Q. When did you finally pass all four</p> <p>13 parts?</p> <p>14 A. It may have been '86, may have been</p> <p>15 '87. I can't remember. I do know that I got</p> <p>16 the certificate in '87.</p> <p>17 Q. That's what I was going to mention</p> <p>18 to you. Your resume says you became a C.P.A.</p> <p>19 in '87. I didn't know if that's correct or</p> <p>20 not. Did you continue to take accounting</p> <p>21 courses after you left the Ohio Division of</p> <p>22 Securities and worked at Enz Jones LeGrand?</p> <p>23 A. I did take one course at Miami</p> <p>24 University in what's called advanced</p> <p>25 accounting. That includes consolidations. I</p>	<p style="text-align: right;">Page 53</p> <p>1 FUERMAN</p> <p>2 Univeristy of Cincinnati is when you let your</p> <p>3 bar admissions become inactive?</p> <p>4 A. Right, something like that.</p> <p>5 Q. Tell me about the kinds of things</p> <p>6 you did as a professor or assistant professor</p> <p>7 while you were getting your Ph.D. at the</p> <p>8 University of Cincinnati?</p> <p>9 MR. BRAUTIGAM: Objection. Question</p> <p>10 makes no sense.</p> <p>11 MR. BURKE: Let me rephrase that.</p> <p>12 Q. During the time you were acquiring</p> <p>13 your Ph.D. at the University of Cincinnati in</p> <p>14 accounting, did you also do some TA work?</p> <p>15 A. Yes, I did. After a couple years in</p> <p>16 the program all the grad students who teach</p> <p>17 entry level financial accounting and entry</p> <p>18 level managerial accounting, we typically</p> <p>19 would have three sections of 72 students</p> <p>20 each -- usually you would teach financial</p> <p>21 accounting in the fall and maybe in the winter</p> <p>22 and then managerial in the spring.</p> <p>23 I'm trying to remember how they</p> <p>24 worked it there. Cincinnati at the time, I</p> <p>25 don't know if they still are, at the time they</p>

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<p style="text-align: right;">Page 54</p> <p>1 FUERMAN</p> <p>2 were on a quarter system. I can't remember</p> <p>3 exactly when the courses were, but I taught a</p> <p>4 lot of entry level financial accounting to</p> <p>5 undergrads and managerial accounting to</p> <p>6 undergrads, mostly sophomores.</p> <p>7 Q. Did you have a specialty in</p> <p>8 accounting when you obtained your Ph.D., was</p> <p>9 there any area of focused?</p> <p>10 A. Yes. It's the area I focused my</p> <p>11 dissertation on. It comes back to me also. I</p> <p>12 requested and they gave me permission also</p> <p>13 while I was a grad student to teach auditing.</p> <p>14 So I actually taught auditing for a</p> <p>15 couple of years before becoming an assistant</p> <p>16 professor. I wanted to get experience</p> <p>17 teaching that before I became an assistant</p> <p>18 professor, so I could develop my teaching</p> <p>19 skills better.</p> <p>20 Q. How did you come to go from the</p> <p>21 University of Cincinnati to Suffolk?</p> <p>22 A. I submitted my resume to a number of</p> <p>23 different colleges and universities across the</p> <p>24 United States, focusing on schools looked most</p> <p>25 interesting, City's that looked like the most</p>	<p style="text-align: right;">Page 56</p> <p>1 FUERMAN</p> <p>2 Q. Did you apply for a position, a</p> <p>3 full-time position at UC after you obtained</p> <p>4 your Ph.D.?</p> <p>5 A. I did in the sense of I applied for</p> <p>6 an instructor position for one year and I was</p> <p>7 given a one-year instructor position.</p> <p>8 Q. You didn't apply for a faculty</p> <p>9 position at UC?</p> <p>10 A. No, I was not encouraged to do so.</p> <p>11 It on occasion has happened that Ph.D.</p> <p>12 students do become a member of the faculty, a</p> <p>13 real professor at that institution, but it's</p> <p>14 very unusual.</p> <p>15 Q. So when you say you were not</p> <p>16 encouraged, who did not encourage you to do</p> <p>17 that?</p> <p>18 A. Nobody in particular encouraged me,</p> <p>19 but I knew just from talking with people. And</p> <p>20 the whole history of the UC Ph.D. program,</p> <p>21 there's only one person who ever went through</p> <p>22 the Ph.D. program and was asked to become a</p> <p>23 professor there out of all the people. She</p> <p>24 was my dissertation advisor.</p> <p>25 Q. The three offers that were made to</p>
<p style="text-align: right;">Page 55</p> <p>1 FUERMAN</p> <p>2 interesting places to live. And some schools</p> <p>3 would respond favorably or not, some schools</p> <p>4 would interview me at the national meeting</p> <p>5 that was held each August.</p> <p>6 A smaller number of schools would</p> <p>7 invite me to visit their campus, make a</p> <p>8 presentation and meet the people. Then a</p> <p>9 still smaller number made an offer to me.</p> <p>10 There were three schools that made an offer</p> <p>11 and Suffolk was one of them.</p> <p>12 Q. When were those three offers made to</p> <p>13 you?</p> <p>14 A. In I think it was the spring of 1996</p> <p>15 was one offer, but I didn't feel it was all</p> <p>16 that attractive. Then two more offers came in</p> <p>17 December of '96.</p> <p>18 Q. When did you complete your</p> <p>19 dissertation and receive your Ph.D. from UC?</p> <p>20 MR. BRAUTIGAM: Objection, asked and</p> <p>21 answered.</p> <p>22 Q. You can answer.</p> <p>23 A. I defended the dissertation May of</p> <p>24 '96, marched in the commencement ceremony June</p> <p>25 of '96.</p>	<p style="text-align: right;">Page 57</p> <p>1 FUERMAN</p> <p>2 you, one was from Suffolk?</p> <p>3 A. That's correct.</p> <p>4 Q. Where were the other two?</p> <p>5 A. University of Wisconsin Greenbay.</p> <p>6 Q. Okay.</p> <p>7 A. And Cleveland State University.</p> <p>8 Q. You began to work at Suffolk in</p> <p>9 1997?</p> <p>10 A. That's correct, September of '97.</p> <p>11 Q. Just generally trace for me the</p> <p>12 evolution of your career at Suffolk.</p> <p>13 MR. HILLER: Jim, can I interrupt.</p> <p>14 You asked him a little while ago what</p> <p>15 area of study he dealt with in his Ph.D.</p> <p>16 and that reminded him that he taught</p> <p>17 auditing and told us about that, but I</p> <p>18 don't think he really answered your</p> <p>19 question.</p> <p>20 Q. Was there a focus of your Ph.D.</p> <p>21 training, did you have a particular area of</p> <p>22 academic concentration?</p> <p>23 A. Yes. Like all the students there,</p> <p>24 after you do your course work you -- let me</p> <p>25 back up. When you are doing your course work</p>

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<p style="text-align: right;">Page 58</p> <p>1 FUERMAN</p> <p>2 you can tailor your course work a little bit</p> <p>3 to what you intend to do your Ph.D. on, but</p> <p>4 not that much. Then once you finished your</p> <p>5 course work and passed your comprehensive</p> <p>6 exam, then you study just for the purpose of</p> <p>7 being knowledgeable enough to write your</p> <p>8 dissertation.</p> <p>9 By that time, of course, I had</p> <p>10 decided that my natural nitch was to write on</p> <p>11 the role of auditors in litigation. So I read</p> <p>12 everything I could possibly get my hands on on</p> <p>13 that subject.</p> <p>14 Q. That also was the focus of your</p> <p>15 dissertation?</p> <p>16 A. That was, yes.</p> <p>17 Q. So you would identify the role of</p> <p>18 auditors in litigation as the area of academic</p> <p>19 focus during your Ph.D. career at University</p> <p>20 of Cincinnati; is that fair?</p> <p>21 A. That's correct.</p> <p>22 MR. BURKE: Let's take five minutes</p> <p>23 and then we'll come back.</p> <p>24 (Recess taken.)</p> <p>25 (Record read.)</p>	<p style="text-align: right;">Page 60</p> <p>1 FUERMAN</p> <p>2 November, December of '96 there was a group of</p> <p>3 Stanford law professors that showed how that</p> <p>4 is associated in general with companies being</p> <p>5 named, companies and officers and directors,</p> <p>6 being named defendants in the securities</p> <p>7 lawsuits also.</p> <p>8 They had a slightly different</p> <p>9 approach, but they showed that. Subsequently</p> <p>10 that has become a big thing that has been</p> <p>11 cited in a number of papers. At that time</p> <p>12 restatements were not that interesting I don't</p> <p>13 think to people.</p> <p>14 Q. Which time are you talking about?</p> <p>15 A. In 1996. But they became I think</p> <p>16 much more interesting as a result of</p> <p>17 Lynn Turner talking about restatements, I</p> <p>18 can't remember if it was '98 or '99. He gave</p> <p>19 a speech and he talked about restatements.</p> <p>20 Then that generated interest in</p> <p>21 other people in doing research on this and</p> <p>22 then, of course, there's been the general</p> <p>23 accounting office study on restatements</p> <p>24 pursuant to Sarbane's-Oxley Act. So I cranked</p> <p>25 out these various research papers, got them</p>
<p style="text-align: right;">Page 59</p> <p>1 FUERMAN</p> <p>2 Q. I think before we clarified that,</p> <p>3 one of the things I was asking just in a</p> <p>4 summary fashion is tell me about your career</p> <p>5 at Suffolk, what you've done, what you've</p> <p>6 focused in and what you've taught?</p> <p>7 A. I've continued to research this</p> <p>8 topic using different variables to determine</p> <p>9 what characteristics are generally present if</p> <p>10 the auditor gets named a defendant, what</p> <p>11 characteristics are not. That seems like a</p> <p>12 very simple thing, but I've created half a</p> <p>13 dozen published research papers on that doing</p> <p>14 it in different ways, looking at different</p> <p>15 time periods, different contexts, different</p> <p>16 variables.</p> <p>17 The unique variable that I came up</p> <p>18 with before anybody else, undisputed, I was</p> <p>19 the first to demonstrate that the restatement</p> <p>20 of previously issued audited annual financial</p> <p>21 statements is strongly positively associated</p> <p>22 with the auditor subsequently being named a</p> <p>23 defendant in a private securities class</p> <p>24 action. That was in my dissertation which I</p> <p>25 defended in May of '96. Then I saw around</p>	<p style="text-align: right;">Page 61</p> <p>1 FUERMAN</p> <p>2 published in a variety of journals because,</p> <p>3 well, for two reasons.</p> <p>4 One, I needed to do that to get</p> <p>5 tenured, but I love research. If I had any</p> <p>6 one thing that I was allowed to do all the</p> <p>7 time every day, that's what I would do. I</p> <p>8 can't, I have to also teach my students and do</p> <p>9 service to the university.</p> <p>10 So far as teaching at the</p> <p>11 university, mostly I have been teaching entry</p> <p>12 level financial accounting and auditing. The</p> <p>13 entry level financial accounting is for</p> <p>14 sophomores who are just in any area of</p> <p>15 business.</p> <p>16 All the business students,</p> <p>17 regardless of what they are going to major in,</p> <p>18 have to take that course, much to their</p> <p>19 chagrin I think after my last midterm that I</p> <p>20 gave them. But it's one of the courses that I</p> <p>21 teach. Also, I teach auditing both to</p> <p>22 undergrads, mostly seniors who are majoring in</p> <p>23 accounting, and also I teach a separate course</p> <p>24 to Master students in auditing.</p> <p>25 Most of those people are studying</p>

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1 FUERMAN

2 for a Master in Science and Accountancy,

3 although some of them are going for an MBA or

4 a graduate diploma in Professional

5 Accountancy, which people call a GDPA. Then

6 the third course -- actually I did teach

7 managerial accounting once several years ago

8 at Suffolk, but that was it. It's not my

9 favorite thing.

10 Q. What is "managerial accounting"?

11 A. "Managerial accounting" is the kind

12 of accounting that is used internally by

13 companies, so as to run the company more

14 efficiently and profitably. It's not

15 information that is released to the outside

16 investors. That's what financial accounting

17 is.

18 Around '98 or '99 I began to discuss

19 with the head of our accounting department at

20 Suffolk his idea that, what he called forensic

21 accounting, was a real up and coming thing and

22 that our department ought to develop a course

23 in that. We talked about it and first I

24 resisted, I didn't want to take time away from

25 my research, but as I thought about it and

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1 FUERMAN

2 learned more about it I became intrigued by

3 the topic, because it fits my background so

4 well.

5 It's in many ways it is a

6 cross-disciplinary topic. Especially the way

7 I teach it, where you have the disciplines of

8 accounting and auditing and criminal law and

9 criminal justice and criminology all involved

10 in this course. When people use the phrase

11 "forensic accounting" there are two meanings.

12 The meaning that I usually use is

13 conveyed by fraud, the title "fraud

14 examination." That's how I've renamed my

15 course starting a couple years ago. It is the

16 approach taken by Joseph Wells who founded the

17 Association of Certified Fraud Examiners to

18 focus on the disciplines I've talked about.

19 Some people when they use the phrase

20 "forensic accounting," they include additional

21 things, such as business valuation, in

22 divorces and other kinds of disputes.

23 Computation of economic damages, for example,

24 which I know there have been experts engaged

25 in this case for that topic. But those are

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2 not really areas that I'm in or that I teach

3 at Suffolk.

4 Q. Okay. You said that you base your

5 course on the approach taken by Joseph Wells?

6 A. Correct.

7 Q. How do you define "forensic

8 accounting"? You may have told me, but I

9 missed it.

10 A. I think of it as fraud examination,

11 and that's the title that my course uses now

12 for the last two years. And that's the title

13 of the textbook I use by Steve Albrecht.

14 Q. When did Mr. Wells, if you know,

15 found the Association of Certified Fraud

16 Examiners?

17 A. 1988.

18 Q. At some point you became a certified

19 fraud examiner?

20 A. That's correct.

21 Q. When was that?

22 A. Would have been 1999.

23 Q. Tell me if you would what you had to

24 do to become that?

25 A. I had to go through a course of

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1 FUERMAN

2 study and then pass an exam and submit

3 evidence that I had substantial experience

4 that would entitle me to call myself a

5 certified fraud examiner. Experience in

6 pretty much the things that I'm experienced

7 in; accounting, auditing, law, some

8 involvement in fraud investigations, broadly

9 interpreted through the division of securities

10 at a private law firm, having performed a

11 fraud audit.

12 Q. You performed one fraud audit?

13 A. I did perform one fraud audit.

14 Q. When was that?

15 A. That was in, I think it was in 1999.

16 It was shortly before I became a certified

17 fraud examiner.

18 Q. Assuming you are at liberty to

19 discuss that, what did that involve?

20 A. It involved going through the books

21 and records and documents of a company, in a

22 town in Ohio, that according to the classic

23 profile of fraud could have possibly

24 experienced fraud. Because the owners were

25 not heavily involved in the business and so,

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1 FUERMAN

2 therefore, the manager and the bookkeeper were

3 not extensively supervised. People would call

4 this a weak internal control situation. So I

5 went and I examined the books and the records.

6 The cancelled checks, the checkbook

7 registers and I did various investigations,

8 looked at things and I found no evidence of

9 fraud that came to my attention. That's when

10 I wrote my report.

11 Q. Who hired you?

12 A. The partners of this business.

13 Q. What was the name of the business?

14 A. Monroe Associates.

15 Q. They are based where?

16 A. Well, I don't want to say.

17 Q. Okay. You looked at some books,

18 checks, check registers and concluded there

19 was no fraud?

20 A. Right.

21 Q. How long did this take you?

22 A. Several weeks.

23 Q. That's the sum total of your fraud

24 examination experience as we sit here today?

25 A. That's the sum total of my having

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1 FUERMAN

2 performed fraud audits, yes.

3 Q. You indicated that to become a

4 certified fraud examiner there was a course of

5 study?

6 A. That is correct.

7 Q. How long did that take you?

8 A. It took me several months.

9 Q. Was it computer correspondence or

10 did you attend classes?

11 A. I did not attend physical classes.

12 It was on a CD Rom that I purchased from the

13 Association of Certified Fraud Examiners.

14 Q. Then you took an exam?

15 A. That is correct.

16 Q. Was that also on line or on a CD

17 Rom?

18 A. That was on a separate compact disc

19 or maybe it was a floppy disc, a special

20 device, to assure that the person taking it

21 only has a limited amount of time to answer

22 each question.

23 Q. Following -- have you been hired to

24 perform a fraud exam since the Monroe

25 situation?

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1 FUERMAN

2 A. No.

3 Q. I take it you did not in the course

4 of your duties for this case perform any fraud

5 exam?

6 A. Not in the sense of a formal fraud

7 examination, however, I brought my knowledge

8 and experience to bear when reading and

9 interpreting the materials that I reviewed for

10 this course.

11 Q. But my question is the first one you

12 answered, which is did you perform a formal

13 fraud exam in accordance with whatever the

14 standards and practices are of the certified

15 fraud examiner designation for purposes of

16 this case?

17 MR. BRAUTIGAM: Objection.

18 Q. Do you understand that?

19 A. I believe that the opinions I've

20 rendered that might be regarded as being

21 related to fraud examination and certified

22 fraud examiners are within the parameters of

23 the things -- of the kind of opinions that

24 certified fraud examiners are entitled to

25 give.

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1 FUERMAN

2 Q. Maybe I'm misusing terms. You

3 talked earlier and I think you defined your

4 retention for the Monroe Company or Monroe

5 Associates as a "fraud audit"?

6 A. Right. It was to look to see if any

7 fraud had occurred. There was no suggestion

8 that fraud had occurred, but just as a

9 prophylactic some businesses like to

10 periodically have a C.P.A. or a certified

11 fraud examiner come in and conduct such a

12 study.

13 Q. Is "fraud auditing" a defined term

14 among certified fraud examiners?

15 A. Yes. I mean my understanding is --

16 I have to back up. There are some variations

17 in the jargon that's used in the field. I

18 just mentioned earlier that some people refer

19 to the field as forensic accounting and others

20 call it fraud examination.

21 Generally a fraud audit is formally

22 known as a situation where a certified fraud

23 examiner, for example, is brought in as a

24 prophylactic to investigate a business or

25 situation where there's no allegation of fraud

<p style="text-align: right;">Page 70</p> <p>1 FUERMAN</p> <p>2 that has occurred. A fraud investigation is</p> <p>3 more typically thought of as, for example,</p> <p>4 when the Lernout and Hauspie scandal broke.</p> <p>5 I was told that KPMG is the auditor</p> <p>6 there. Arthur Anderson's Boston office was</p> <p>7 sent in to perform a fraud examination or a</p> <p>8 forensic accounting engagement, however you</p> <p>9 want to term it. Usually fraud examination is</p> <p>10 more in terms of when there's allegations of</p> <p>11 fraud, and at the point when they were brought</p> <p>12 in allegations of fraud had been made.</p> <p>13 Q. So "fraud examination" would also be</p> <p>14 a defined term among certified fraud</p> <p>15 examiners; is that right?</p> <p>16 A. I think so, yes.</p> <p>17 Q. You told me about a fraud audit.</p> <p>18 A. Well, if I could interrupt, I'm</p> <p>19 sorry. Fraud examination has at least two,</p> <p>20 maybe three meanings among people in the</p> <p>21 field. One is, it's an area of knowledge and</p> <p>22 expertise.</p> <p>23 Another is that it's a particular</p> <p>24 kind of engagement. When I use the term</p> <p>25 "fraud examination" for my course at</p>	<p style="text-align: right;">Page 72</p> <p>1 FUERMAN</p> <p>2 Q. Have you ever --</p> <p>3 A. Other than my opinion after</p> <p>4 completing the fraud audit.</p> <p>5 Q. I'm talking about the audit of</p> <p>6 financial statements?</p> <p>7 A. That's correct.</p> <p>8 Q. So you've never signed off on an</p> <p>9 audit opinion, whether it be qualified or</p> <p>10 unqualified, on any financial statements,</p> <p>11 public or private, in your career?</p> <p>12 A. That is correct.</p> <p>13 Q. And we talked earlier about your</p> <p>14 legal experience. At least as you sit here</p> <p>15 today you've never tried a lawsuit?</p> <p>16 A. That is correct.</p> <p>17 Q. Have you ever taken a deposition?</p> <p>18 A. I would sit sometimes at</p> <p>19 depositions. My firm would send me and I</p> <p>20 would sit there for hours without saying a</p> <p>21 word.</p> <p>22 Q. Did you ever actually question</p> <p>23 anybody that you remember?</p> <p>24 A. Substantively in a meaningful way,</p> <p>25 the way you are doing, no.</p>
<p style="text-align: right;">Page 71</p> <p>1 FUERMAN</p> <p>2 Suffolk University that's to indicate that</p> <p>3 this is the field of, this is the area that</p> <p>4 we're studying.</p> <p>5 Q. Were you retained in this case to</p> <p>6 perform a fraud examination engagement?</p> <p>7 A. No.</p> <p>8 MR. BRAUTIGAM: Objection. This is</p> <p>9 the third time this question has been</p> <p>10 asked in almost exactly the same form.</p> <p>11 MR. BURKE: Just trying to get the</p> <p>12 terms straight.</p> <p>13 Q. Thanks, Mr. Fuerman. I want to ask</p> <p>14 you, we talked about your C.P.A. license and</p> <p>15 when you were licensed.</p> <p>16 Have you ever worked for a public</p> <p>17 accounting firm?</p> <p>18 A. No, I have not.</p> <p>19 Q. Have you ever participated in the</p> <p>20 audit of financial statements, either public</p> <p>21 or private?</p> <p>22 A. No.</p> <p>23 Q. Have you ever issued an audit</p> <p>24 opinion?</p> <p>25 A. No.</p>	<p style="text-align: right;">Page 73</p> <p>1 FUERMAN</p> <p>2 Q. Did you ever during the course of</p> <p>3 your legal career write or prepare public SEC</p> <p>4 filings?</p> <p>5 A. I did help prepare SEC filings for</p> <p>6 Cardinal Industries in the sense that when we</p> <p>7 would do our private placement offerings those</p> <p>8 would be filed with a Regulation D form. As</p> <p>9 far as public offerings, I did assist at least</p> <p>10 once, maybe twice, in a public offering that</p> <p>11 was done.</p> <p>12 I know one of them was the real</p> <p>13 estate investment trust. There may have been</p> <p>14 a limited partnership public offering too. I</p> <p>15 can't remember at this point.</p> <p>16 Q. Did you actually write those</p> <p>17 documents or did you just assist with them?</p> <p>18 A. I did some of the writing, other</p> <p>19 people did some of the writing.</p> <p>20 Q. What was the nature of what you were</p> <p>21 describing or writing about in those public</p> <p>22 offerings?</p> <p>23 A. The general nature of the</p> <p>24 transaction and who are the people at Cardinal</p> <p>25 Industries and who are the people involved,</p>

19 (Pages 70 to 73)

<p style="text-align: right;">Page 74</p> <p>1 FUERMAN</p> <p>2 who were the underwriters, who were the</p> <p>3 accountants. I would review looking for</p> <p>4 mistakes. I would not generally write</p> <p>5 anything of a tax opinion because that was</p> <p>6 handled by an outside law firm.</p> <p>7 But sometimes I would or sometimes</p> <p>8 I would point out things that were unique or</p> <p>9 different about this particular transaction</p> <p>10 that I thought the outside law firm doing the</p> <p>11 tax opinion ought to know. I would review the</p> <p>12 projections.</p> <p>13 Q. Is it fair to say that your role was</p> <p>14 more in the nature of reviewing and</p> <p>15 commenting, as opposed to actually writing</p> <p>16 disclosure documents or SEC documents in the</p> <p>17 first instance?</p> <p>18 MR. BRAUTIGAM: Objection to the</p> <p>19 form.</p> <p>20 A. By "SEC documents," do you mean</p> <p>21 private placement offerings or just the public</p> <p>22 offerings.</p> <p>23 Q. I'm talking about the public</p> <p>24 offerings.</p> <p>25 A. My experience with public offerings</p>	<p style="text-align: right;">Page 76</p> <p>1 FUERMAN</p> <p>2 of things having to do with the tax opinion.</p> <p>3 Q. Tax opinion on what, on offerings?</p> <p>4 A. Well, we came to one point, and this</p> <p>5 was not a trivial matter in my view, where the</p> <p>6 company Cardinal Industries was getting into</p> <p>7 worse and worse financial condition. And I</p> <p>8 happen to know from my own knowledge of tax</p> <p>9 accounting that the current tax opinion, that</p> <p>10 the boiler plate that had been used in</p> <p>11 offering after offering after offering was</p> <p>12 really no longer appropriate and needed to be</p> <p>13 changed because there was substantial doubt</p> <p>14 whether Cardinal Industries, by that point,</p> <p>15 had a positive net worth.</p> <p>16 I felt it was appropriate for me to</p> <p>17 let tax counsel know this, not be left hanging</p> <p>18 out to dry. There were some people at</p> <p>19 Cardinal Industries that were not happy about</p> <p>20 what I had done, but I felt that was the right</p> <p>21 thing to do.</p> <p>22 Q. I take it you never worked for an</p> <p>23 investment banking outfit; is that correct?</p> <p>24 A. That is correct.</p> <p>25 Q. Have you ever been involved in a</p>
<p style="text-align: right;">Page 75</p> <p>1 FUERMAN</p> <p>2 is very limited, if that's what you mean to</p> <p>3 ask.</p> <p>4 Q. That's what I mean, thank you. Did</p> <p>5 you ever participate in restatement of</p> <p>6 financials by any company?</p> <p>7 A. No.</p> <p>8 Q. Did you ever serve in any employment</p> <p>9 position where you were involved in the</p> <p>10 compilation or preparation of financial</p> <p>11 statements on the inside, working as a company</p> <p>12 employee?</p> <p>13 A. No, but I would help with</p> <p>14 compilation and preparation of projections for</p> <p>15 the private placement offerings.</p> <p>16 Q. But in terms of compiling internal</p> <p>17 financial statements, working as an accountant</p> <p>18 within a company, you never did that during</p> <p>19 your job experience?</p> <p>20 A. Well, the work with the projections</p> <p>21 I regard as accounting related work. I would</p> <p>22 do that.</p> <p>23 Q. Other than that that's the extent?</p> <p>24 A. And well, I also regarded as</p> <p>25 accounting related the review and commenting</p>	<p style="text-align: right;">Page 77</p> <p>1 FUERMAN</p> <p>2 merger transaction, either on behalf of the</p> <p>3 acquiring company or the acquired company?</p> <p>4 A. No.</p> <p>5 Q. Have you ever written a proxy</p> <p>6 statement?</p> <p>7 A. No.</p> <p>8 Q. Have you ever sat on the board of</p> <p>9 directors of a private or a public company?</p> <p>10 A. Not a for profit organization, no.</p> <p>11 Q. That's what I'm referring to, for</p> <p>12 profit. Have you ever sat on the audit</p> <p>13 committee of a public company?</p> <p>14 A. No.</p> <p>15 Q. Have you ever been retained to</p> <p>16 advise the board of a public company or the</p> <p>17 audit committee of a public company?</p> <p>18 A. No.</p> <p>19 Q. Have you ever been hired to perform</p> <p>20 forensic accounting work, other than the one</p> <p>21 engagement you talk about earlier?</p> <p>22 A. No. Other than, you know, voicing</p> <p>23 my opinions based on my background as a</p> <p>24 certified fraud examiner.</p> <p>25 Q. You've been a certified fraud</p>

20 (Pages 74 to 77)

<p style="text-align: right;">Page 78</p> <p>1 FUERMAN</p> <p>2 examiner for five years now roughly?</p> <p>3 A. That is correct.</p> <p>4 Q. Have you ever worked in the criminal</p> <p>5 justice system?</p> <p>6 A. No.</p> <p>7 Q. Earlier you talked about articles</p> <p>8 that you wrote that relate to the area of</p> <p>9 accountant liability or accountants being</p> <p>10 named as defendants. You say those are the</p> <p>11 articles you wrote. Which articles on your</p> <p>12 resume relate to that topic?</p> <p>13 MR. BRAUTIGAM: Objection to the</p> <p>14 form of the question.</p> <p>15 A. They all relate to that topic. I'm</p> <p>16 not sure how to respond.</p> <p>17 Q. Let me just try to rephrase that.</p> <p>18 The first two pages of your resume there are a</p> <p>19 series of article publications that you've</p> <p>20 listed.</p> <p>21 A. Correct.</p> <p>22 Q. What is the general topic of these</p> <p>23 articles? Did these deal with your principal</p> <p>24 focus on securities litigation and auditors?</p> <p>25 MR. BRAUTIGAM: Objection.</p>	<p style="text-align: right;">Page 80</p> <p>1 FUERMAN</p> <p>2 liability research. It's a very short piece,</p> <p>3 part of a special issue where I and other</p> <p>4 professors argued that there should be more</p> <p>5 debate about some of the issues of auditor</p> <p>6 liability within accounting academe.</p> <p>7 Then if you go farther down that</p> <p>8 page, starting with the articles the C.P.A.'s</p> <p>9 responsibilities for client-related</p> <p>10 information, that's an article that talks</p> <p>11 about the accounting professions code of</p> <p>12 ethics and what responsibilities the auditor</p> <p>13 has to keep information of the client</p> <p>14 confidential in some situations, but disclose</p> <p>15 it in other situations.</p> <p>16 It also talks about some lawsuits</p> <p>17 that are in this area. Then the last two</p> <p>18 articles are entirely on accountants in</p> <p>19 litigation, although not exclusively auditors.</p> <p>20 There might be some discussion in some of</p> <p>21 those of liability related tax preparation,</p> <p>22 for example.</p> <p>23 Then going back to the first page,</p> <p>24 the first two articles that I cite, the first</p> <p>25 one being audit quality examined, the second</p>
<p style="text-align: right;">Page 79</p> <p>1 FUERMAN</p> <p>2 A. Some of them do and some of them do</p> <p>3 not.</p> <p>4 Q. Which ones of the ones at the bottom</p> <p>5 of the first page of your resume, which is</p> <p>6 Exhibit A to Plaintiffs' Exhibit 115, carrying</p> <p>7 over to the second page deal with that topic?</p> <p>8 A. The topic of?</p> <p>9 Q. Auditor involvement in securities</p> <p>10 litigation.</p> <p>11 A. Okay. They all do, but some more</p> <p>12 than others.</p> <p>13 Q. Okay.</p> <p>14 A. I'm trying not to be evasive. Okay,</p> <p>15 starting with the third article, fraudulent</p> <p>16 audited annual financial statements, starting</p> <p>17 with that article and continuing on the next</p> <p>18 page, most of the next six articles have to do</p> <p>19 with analyzing, "What are the characteristics</p> <p>20 associated with auditors being named a</p> <p>21 defendant or not being named a defendant in a</p> <p>22 particular private securities class action."</p> <p>23 One of those is a little difficult.</p> <p>24 The first article lists, at top of the second</p> <p>25 page of the resume, balkanized auditor</p>	<p style="text-align: right;">Page 81</p> <p>1 FUERMAN</p> <p>2 one being accountable accountants, these are</p> <p>3 both on my new theme which is discussed by</p> <p>4 Robert Barker in Business Week.</p> <p>5 Q. What is that team?</p> <p>6 A. The new theme is I'm developed an</p> <p>7 evaluation method to measure auditor quality</p> <p>8 of a particular C.P.A. firm based on their</p> <p>9 performance in the aggregate over time in a</p> <p>10 large number of lawsuits. Now those two</p> <p>11 articles consider not just private securities</p> <p>12 litigation but also SEC enforcement actions</p> <p>13 and justice department criminal actions.</p> <p>14 Q. Is it fair to say that in this case</p> <p>15 you are not opining on anything dealing with</p> <p>16 your new theme in terms of evaluating auditor</p> <p>17 quality?</p> <p>18 A. No, I am not. And I would emphasize</p> <p>19 that I am not opining in my articles on anyone</p> <p>20 individual C.P.A. firm in anyone individual</p> <p>21 case. I'm opining on their quality in the</p> <p>22 aggregate.</p> <p>23 Q. But that particular area of academic</p> <p>24 focus is not involved at all with the opinions</p> <p>25 that you are rendering in this case?</p>

21 (Pages 78 to 81)

<p style="text-align: right;">Page 82</p> <p>1 FUERMAN</p> <p>2 A. That is correct.</p> <p>3 Q. You have not evaluated the</p> <p>4 performance of earns young or any of the other</p> <p>5 auditors in this case?</p> <p>6 A. I have not been asked to give my</p> <p>7 opinion on anything other than materiality and</p> <p>8 restatements and the next sus between them.</p> <p>9 Q. I think this is apparent but just to</p> <p>10 make sure the record is clear, you are not</p> <p>11 opining on anything in this case relating to</p> <p>12 your other area of focus in terms of auditor</p> <p>13 involvement in securities class actions?</p> <p>14 MR. BRAUTIGAM: Objection.</p> <p>15 Q. Do you understand the question?</p> <p>16 A. I'm a little confused.</p> <p>17 Q. Okay. We talked about a couple of</p> <p>18 areas of focus, one of which that has been a</p> <p>19 focus of yours for a long time is what</p> <p>20 indicates whether auditors are or are not</p> <p>21 involved in securities litigation or get</p> <p>22 named, correct?</p> <p>23 A. Correct.</p> <p>24 Q. Are any of the opinions you are</p> <p>25 expressing in this case related to that</p>	<p style="text-align: right;">Page 84</p> <p>1 FUERMAN</p> <p>2 I shouldn't.</p> <p>3 Q. Have you ever been qualified as an</p> <p>4 expert by a court?</p> <p>5 A. No.</p> <p>6 Q. Have you ever been retained as an</p> <p>7 expert?</p> <p>8 A. No.</p> <p>9 MR. BRAUTIGAM: Objection. Other</p> <p>10 than in this case, right?</p> <p>11 MR. BURKE: Yes, and it remains to</p> <p>12 be seen whether he will be qualified or</p> <p>13 anything.</p> <p>14 MR. BRAUTIGAM: But he's been</p> <p>15 engaged.</p> <p>16 MR. BURKE: I understand.</p> <p>17 Q. You have never testified at a</p> <p>18 deposition or trial in any proceeding?</p> <p>19 A. That is correct.</p> <p>20 Q. Have you ever consulted with anybody</p> <p>21 in litigation as an "expert" prior to this</p> <p>22 case?</p> <p>23 A. No.</p> <p>24 Q. Do you know what an "event study"</p> <p>25 is?</p>
<p style="text-align: right;">Page 83</p> <p>1 FUERMAN</p> <p>2 particular area of your academic and</p> <p>3 professional focus?</p> <p>4 A. No, other than in a very trivial</p> <p>5 sense that in the database of my current</p> <p>6 research, which includes about 1,200 lawsuits,</p> <p>7 one of them is Provident and currently I</p> <p>8 believe I've coded Ernst and Young's</p> <p>9 involvement as a one. The involvement of the</p> <p>10 C.P.A. firm ranges from zero to five,</p> <p>11 depending on their involvement. A C.P.A. firm</p> <p>12 that has been named a defendant but appears to</p> <p>13 have gone no further is coded a one.</p> <p>14 Q. But are you testifying in this case</p> <p>15 about anything as it relates to your academic</p> <p>16 focus with respect to Ernst and Young?</p> <p>17 MR. BRAUTIGAM: Objection.</p> <p>18 A. No, I am not. Unless -- well, I</p> <p>19 anticipate that conceivably at this deposition</p> <p>20 somebody will ask me possibly my opinion on</p> <p>21 things that are not strictly related to</p> <p>22 materiality and restatements and the nexus</p> <p>23 between them. Conceivably at this deposition</p> <p>24 if somebody asks me my opinion, then I should</p> <p>25 give it unless there's some legal reason that</p>	<p style="text-align: right;">Page 85</p> <p>1 FUERMAN</p> <p>2 A. Yes.</p> <p>3 Q. Did you perform any kind of an event</p> <p>4 study in this case?</p> <p>5 A. No, I did not.</p> <p>6 Q. Is that something that in the course</p> <p>7 of your academic training you consider</p> <p>8 yourself qualified to perform?</p> <p>9 A. There are different kinds of event</p> <p>10 studies. I should back up. First of all, I</p> <p>11 felt there was no appropriate time to do an</p> <p>12 event study for this case, for my role.</p> <p>13 I didn't feel that was an</p> <p>14 appropriate thing to do. Event studies, I</p> <p>15 have studied event studies in my Ph.D. program</p> <p>16 at Cincinnati. We read many articles on</p> <p>17 different kinds of event studies.</p> <p>18 The most popular genre is "What is</p> <p>19 the relationship between earnings and</p> <p>20 returns." There are many, many studies on</p> <p>21 that topic. I have not published any articles</p> <p>22 in that area. I do not purport to be an</p> <p>23 expert in performing event studies.</p> <p>24 Q. Thank you. With respect to your</p> <p>25 testimony here today, tell me what area of</p>

22 (Pages 82 to 85)

<p style="text-align: right;">Page 86</p> <p>1 FUERMAN</p> <p>2 your professional expertise is involved in the</p> <p>3 reports that you've rendered?</p> <p>4 A. I have spent many years studying</p> <p>5 every conceivable aspect of restatements. I</p> <p>6 was the first academic to come up with proof</p> <p>7 of a statistical relationship between</p> <p>8 restatement of previously issued audited</p> <p>9 financial statements and the auditor being</p> <p>10 named as a defendant.</p> <p>11 Almost all my papers since then have</p> <p>12 been on the topic one way or another of</p> <p>13 restatements, probably with the exception of</p> <p>14 the last two papers, the two most recent</p> <p>15 papers that are listed in my resume.</p> <p>16 Materiality in the context of</p> <p>17 restatements is very carefully laid out.</p> <p>18 There's no wiggle room for much difference of</p> <p>19 opinion in Accounting Principles Board, Option</p> <p>20 Number 20. The kind of materiality research</p> <p>21 that is appropriate, that is laid out in</p> <p>22 Accounting Principles Board, Option Number 20</p> <p>23 or APB No. 20, I feel very qualified to</p> <p>24 perform.</p> <p>25 MR. BURKE: Sorry about that.</p>	<p style="text-align: right;">Page 88</p> <p>1 FUERMAN</p> <p>2 to the certified fraud examiner -- the fraud</p> <p>3 examination field and the auditing field are</p> <p>4 coming together.</p> <p>5 This is partly a result of the</p> <p>6 recommendations that are being implemented,</p> <p>7 issued by the committee on audit effectiveness</p> <p>8 in the year 2000. They recommended that</p> <p>9 auditors, financial statement auditors</p> <p>10 implement more of the kinds of things that are</p> <p>11 part of the knowledge and training of</p> <p>12 certified fraud examiners; especially</p> <p>13 interview and interrogation techniques and</p> <p>14 statement analysis, which is part of</p> <p>15 interviewing and interrogation.</p> <p>16 So this is an area where I've</p> <p>17 studied and, in fact, PricewaterhouseCoopers</p> <p>18 put on a workshop this summer where a</p> <p>19 substantial amount of time was spent on that</p> <p>20 very topic of interview and interrogation and</p> <p>21 statement analysis and analysis of deception.</p> <p>22 In fact, the title of it was called "Detection</p> <p>23 of Deception."</p> <p>24 Q. Even those areas of expertise that</p> <p>25 you just talked about, restatements,</p>
<p style="text-align: right;">Page 87</p> <p>1 FUERMAN</p> <p>2 Let's go off the record for a moment.</p> <p>3 (Discussion off the record.)</p> <p>4 Q. I apologize for the interruption,</p> <p>5 Mr. Fuerman. We talked about your areas of</p> <p>6 expertise being restatements and materiality</p> <p>7 in the context of APB 20?</p> <p>8 A. That's correct.</p> <p>9 Q. Any other areas of expertise that</p> <p>10 you believe are relevant to the opinions that</p> <p>11 you have rendered in this case?</p> <p>12 A. My general expertise in all of GAAP,</p> <p>13 generally accepted accounting principles, and</p> <p>14 GAS, generally accepted auditing standards,</p> <p>15 from my research and my teaching I think is</p> <p>16 relevant. I think at times I'd have to go</p> <p>17 page by page, paragraph by paragraph to</p> <p>18 identify where that comes in to shape my</p> <p>19 opinion in the document, but I think it comes</p> <p>20 in.</p> <p>21 Not as directly as materiality and</p> <p>22 restatements and APB No. 20, but they do come</p> <p>23 in. The other thing that comes in is my</p> <p>24 knowledge and experience in being a certified</p> <p>25 fraud examiner. I've had -- well, in regard</p>	<p style="text-align: right;">Page 89</p> <p>1 FUERMAN</p> <p>2 materiality, your general expertise in GAAP</p> <p>3 and GAS and the certified fraud examiner, you</p> <p>4 have never previously been qualified as an</p> <p>5 expert in those areas?</p> <p>6 A. By a court of law?</p> <p>7 Q. Yes.</p> <p>8 A. That is correct.</p> <p>9 MR. BRAUTIGAM: Objection, asked and</p> <p>10 answered.</p> <p>11 Q. Other than what you told me about,</p> <p>12 are there any other areas of expertise that</p> <p>13 you brought to bear for purposes of the report</p> <p>14 that you provided in the case, to testify in</p> <p>15 this case?</p> <p>16 A. I may have unwittingly brought</p> <p>17 additional areas of expertise to the table.</p> <p>18 Looking back at my career, there's so many</p> <p>19 things I learned in so many different jobs,</p> <p>20 where it appeared immediately after that job</p> <p>21 that this knowledge and experience is</p> <p>22 irrelevant, but then later it became extremely</p> <p>23 useful.</p> <p>24 It's difficult for me to identify</p> <p>25 everything that has an impact on these, you</p>

23 (Pages 86 to 89)

<p style="text-align: right;">Page 90</p> <p>1 FUERMAN</p> <p>2 know, 22 pages. But the bulk of it is focused</p> <p>3 on materiality, restatements and the nexus</p> <p>4 between the two. I think that's a fair</p> <p>5 statement.</p> <p>6 Q. Are you an expert on the federal</p> <p>7 securities law and disclosures pursuant to</p> <p>8 them?</p> <p>9 A. No. I have a threshold knowledge</p> <p>10 but, which I must because I have to teach that</p> <p>11 topic a little bit in my auditing classes, but</p> <p>12 I do not purport to be an expert in that.</p> <p>13 Q. Are you an expert in the public</p> <p>14 securities markets?</p> <p>15 MR. BRAUTIGAM: Objection, over</p> <p>16 broad.</p> <p>17 A. It's difficult to answer because</p> <p>18 what is meant by the "public securities</p> <p>19 markets." I mean I have probably as good a</p> <p>20 knowledge of some areas of regulation that</p> <p>21 have an impact on the public securities</p> <p>22 markets. Maybe things that touch on my</p> <p>23 research and teaching.</p> <p>24 I keep abreast of the latest new</p> <p>25 rules governing audit committees that are</p>	<p style="text-align: right;">Page 92</p> <p>1 FUERMAN</p> <p>2 under APB No. 20.</p> <p>3 Q. Have you ever taught financial</p> <p>4 statement analysis?</p> <p>5 A. No, I have not.</p> <p>6 Q. Have you ever taught any course in</p> <p>7 public securities markets or securities</p> <p>8 regulation?</p> <p>9 A. No, I have not, other than the part</p> <p>10 that is part of my auditing course.</p> <p>11 Q. Have you ever -- I'm sorry.</p> <p>12 A. I'm sorry too. There's also a bit</p> <p>13 of that in my fraud examination course. We</p> <p>14 have a chapter where we talk about that.</p> <p>15 Q. Have you ever participated in the</p> <p>16 preparation of public company 10Ks or 10Qs?</p> <p>17 MR. BRAUTIGAM: Objection, asked and</p> <p>18 answered.</p> <p>19 Q. I apologize if I did.</p> <p>20 A. I did participate in the preparation</p> <p>21 of real estate investment trusts public</p> <p>22 offering at Cardinal Industries. There may</p> <p>23 also have been a publicly offered real estate</p> <p>24 limited partnership. I can't remember about</p> <p>25 that exactly.</p>
<p style="text-align: right;">Page 91</p> <p>1 FUERMAN</p> <p>2 issued by the SEC, the NASDAQ or the New York</p> <p>3 Stock Exchange, for example, because that's</p> <p>4 something I'm responsible to know and stay up</p> <p>5 on.</p> <p>6 Q. Do you hold yourself out as an</p> <p>7 expert in those areas?</p> <p>8 MR. BRAUTIGAM: Objection.</p> <p>9 A. Yes, I do.</p> <p>10 Q. So are you an expert in stock price</p> <p>11 behavior?</p> <p>12 A. I am not a capital markets</p> <p>13 researcher if that's what you mean. There are</p> <p>14 academics that full-time research the</p> <p>15 relationship between earnings and returns, for</p> <p>16 example, or the variability of stock price</p> <p>17 returns. I don't do that kind of research.</p> <p>18 Q. I take it you've never -- I'm sorry,</p> <p>19 I didn't mean to interrupt.</p> <p>20 A. Under APB No. 20 the directive is to</p> <p>21 assume that earnings are important to the</p> <p>22 public securities markets. That's emphasized</p> <p>23 heavily in all the financial statement</p> <p>24 analysis textbooks as very important, and to</p> <p>25 focus on earnings in studying materiality</p>	<p style="text-align: right;">Page 93</p> <p>1 FUERMAN</p> <p>2 Q. My question is not about public</p> <p>3 offering documents because we did talk about</p> <p>4 that. Have you ever participated in the</p> <p>5 preparation of 10Ks or 10Qs, periodic filings</p> <p>6 with the SEC on behalf of a public company?</p> <p>7 A. No, I have not.</p> <p>8 Q. Have you ever participated in a</p> <p>9 securities class action as a plaintiff or</p> <p>10 defense counsel?</p> <p>11 A. No. At the small law firm in</p> <p>12 Columbus we had no class actions either, in</p> <p>13 defense or plaintiff role. They were all</p> <p>14 direct actions.</p> <p>15 Q. I take it you've never participated</p> <p>16 in a securities class action as a party on</p> <p>17 either side?</p> <p>18 MR. BRAUTIGAM: Objection. Do you</p> <p>19 mean a class member or named class</p> <p>20 representative?</p> <p>21 MR. BURKE: No, I'm talking</p> <p>22 plaintiff or defendant.</p> <p>23 A. I from time to time have gotten</p> <p>24 notices from my broker which happens to be</p> <p>25 McDonald, a notice of settlement of class</p>

24 (Pages 90 to 93)